

Cowart Seafood Corp.

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February 2, 2005

Mr. Bill Sessions, Deputy Administrator
USDA Agriculture Marketing Service Association
Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
USDA STOP 0249
1400 Independence Avenue SW
Washington, DC 20250-0249

*Re: Docket No. LS-03-04: Mandatory Country of Origin Labeling of Fish
and Shellfish, Interim Final Rule*

Dear Sir:

Cowart Seafood Corp. appreciates the opportunity to comment on the USDA interim final rule for Mandatory Country of Origin Labeling of Fish and Shellfish. Cowart Seafood Corp. favors the adoption of the current definition (Section 60.106) of *farm-raised* shellfish for the following reasons:

I. East Coast oyster processors shuck product from public and private grounds from as far north as New York and as far south as Texas.

a. Under the current definition, all of the product shucked by Virginia and Maryland oyster processors is *wild-raised*, resulting in one classification for the labeling of the many different sizes of preprinted plastic containers used to market shucked oysters (exhibit III).

b. Under the revised definition as written by the Pacific Coast Shellfish Growers Association oysters from private beds would be *farm-raised* and oysters from public beds would be *wild-raised* regardless of how they were produced. Under this definition the same shellfish product would require different labeling and cause an insurmountable labeling and recordkeeping nightmare for East

coast and Gulf coast oyster processors. Dual inventories, of preprinted packing supplies, would require thousand of dollars of additional inventory.

c. Under the revised definition oysters caught on public grounds as *wild-raised* today and then re-planted on private beds and re-harvested as early as the next day would be called *farm-raised* shellfish. The same shellfish growing in the same water, but because of a revised definition, would have to be labeled differently by law.

NOTE: New Jersey, Delaware, Virginia, Louisiana, and Texas allow the harvest of oysters from public grounds (wild-raised) to be planted on private leased grounds. Public grounds are open to the harvest of marketable oysters for specific seasons per year, unlike private grounds which are open all year. Once again, under the revised definition the same shellfish would be labeled differently.

II. The oyster shucking industry has already complied with COOL legislation as defined in section 60.106.

A. The original deadline for compliance was September 20, 2004.

1. Cowart Seafood Corp worked with the National Fisheries Institute (NFI), (Bob Collette, Vice-President Science and Technology and Justin LeBlanc), contacted the staffs of Senators John Warner and George Allen, and contacted Congressional Representatives JoAnn Davis, Virgil Goode, and Robert Goodlatte requesting that seafood be exempt from the regulation, or the regulation made voluntary, or the implementation of the regulation be delayed for two years.

2. By the middle of September 2004 it became apparent to NFI (Justin LeBlanc) that seafood labeling would not be voluntary, and there would not be an extension. Representative Goodlatte's voluntary labeling bill before the House Agriculture Committee was not going to pass, even though he was the chairman.

IV. There is a proposal that will likely gain support of the shellfish industry.

A. There is consensus within the industry that the best solution to a complex problem is to exempt *wild-raised* or *farm-raised* molluscan shellfish. This is a legislative, not a regulatory fix. The Pacific Coast Shellfish Growers Association has already determined that their legislative representatives in Washington are very supportive of the idea.

Included with this letter of support for the existing language of section 60.106 are the following industry summaries on the following subjects:

Exhibit I: Shell Oyster Marketing

Exhibit II: Clam Production and Marketing

Exhibit III: Shucked Oyster Marketing

Exhibit IV: Production Methods – Farm-Raised vs Wild-Raised

Thank you for considering Cowart Seafood Corp.'s views on Section 60.106.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Lake Cowart, Jr.", with a long horizontal flourish extending to the right.

S. Lake Cowart, Jr.
Vice-President

3. During September 2004 customers were applying pressure to Cowart Seafood Corp. to indemnify them and guarantee compliance with the COOL act by September 30, 2004. Cowart Seafood Corp. ordered 50,000 stick-on labels printed with 'Wild Caught Shellfish and Product of the USA' to insure compliance until printing plate changes could be made and new inventories of plastic oyster containers delivered.

B. Just before implementation, the deadline was extended until April 1, 2005.

1. Cowart Seafood continued to make printing plate changes to bring 35 different packing containers into compliance. Printing plate changes can take up to six weeks. Cowart Seafood Corp.'s cost for new printing plates was \$6,035.79.

2. The extension until April 1, 2005, has allowed many containers to be used without having to hand apply "Wild Caught Shellfish and Product of the USA" stickers.

III. The proposal to change the definition as recommended by the Pacific Coast Shellfish Growers Association could create only one classification for oysters and clams.

A. The wording "controlled or managed beds" can refer to public beds, or those not privately leased. Each shellfish producing state has a marine regulatory authority (policy making and enforcement) and a shellfish safety division (health department) to control and manage the public shellfish beds and also to a limited extent private beds.

B. If all shellfish production becomes *farm-raised* there would be no need for a regulation requiring labeling. Companies truly farm-raising product would be hurt.

C. There is a difference in *wild-raised* and *farm-raised* shellfish and it is clearly defined in section 60.106 as it is currently written.

Cowart Seafood Corp.
Exhibit I

Shell Oyster Marketing

Most *farm-raised* oysters, under the current definition, are sold live in the shell. They are sold by count, 100 ct, 200 ct, etc. Computer generated cards are attached to each box or bag (required by law –NSSP) of oysters showing the date caught, harvest area, state, packers certification number, etc. The *wild-raised* or *farm-raised* designation is added to each computer generated Tyvak card printed.

At least 90% of the wild-raised oysters produced, under the current definition, from the Delaware Bay to Texas are shucked and sold as shucked oysters or frozen oysters on the ½ shell. (Virginia processes over one million bushels per year.) The remaining 10% are sold live in the shell for raw consumption. This 10% represents a far greater amount of product in volume and dollar sales than all of the *farm-raised* product produced under the current definition.

Under the definition change recommended by MSI about ½ of the yearly production from these areas currently labeled as wild-raised would be labeled *farm-raised*, simply because they came off a private lease. This is wrong because these oysters or clams were born in the wild, and grow in the wild.

Cowart Seafood Corp
Exhibit II

Clam Production and Marketing

Farm-raised clams, under the current definition, raised in Virginia are gaining a greater share of the market. These clams truly meet the current definition since they are produced in a hatchery, nurtured in nursery trays, and then planted in beds under nets. This industry has proven financially successful on the Eastern Shore of Virginia. It is all private or private leases and continues to claim a greater share of the clam market each year.

Wild-raised clams on public and private beds in Virginia represented 100% of the total clam sales until 1985. In 1985, the first *farm-raised* clams were produced by Cherrystone Aquafarms, Cheriton, VA. *Wild-raised* clams now represent less than 50% of the market.

Cowart Seafood Corp.
Exhibit III

Shucked Oyster Marketing

The East Coast and Gulf coast oyster processing industry markets shucked oysters in many different plastic and glass containers. These containers are preprinted and printing plate changes are necessary when the information changes. New printing plates are costly and containers already in inventory must be either hand labeled with information changes or they must be destroyed.

The following container sizes are carried by Cowart Seafood Corp. New plates for most of these plastic containers have already been made:

1 gallon:	Chesapeake Pride Columbus Fish OceanSpra Sea Mist Sparrer Brand
½ gallon:	Sea Mist Sparrer Brand North Shore
16 oz Standards:	Chesapeake Pride OceanSpra Sparrer Brand
16 oz Selects:	Chesapeake Pride OceanSpra Sparrer Brand
12 oz Standards:	Chesapeake Pride OceanSpra Sparrer Brand
12 oz Selects:	Chesapeake Pride OceanSpra Sparrer Brand
8 oz Standards:	Chesapeake Pride Diamond Shoals OceanSpra Sparrer Brand Wegmans

Cowart Seafood Corp.
Exhibit III, continued

8 oz Selects: Chesapeake Pride
 Diamond Shoals
 OceanSpra
 Sparrer Brand

Products packed in glass require the new wording either printed on the shrink band which is applied around the screw top lid or wording added to a label applied to the top of the jar. The products packed in glass include:

32 oz Standards
32 oz Selects

16 oz Standards
16 oz Selects

12 oz Standards
12 oz Selects

8 oz Standards
8 oz Selects

Product is also packed and frozen in 1 gallon poly-bags which requires new wording to be imprinted on the bag.

Altogether there are 35 different packing containers used in our plant for fresh shucked oysters. Most of the plates have already been re-designed and new containers printed using "wild-caught shellfish". So far this change has cost us \$6,035.79.

Cowart Seafood Corp.
Exhibit IV

Production Methods
Farm Raised vs. Wild Raised

Please consider the following information when you make a decision on the definition of *farm-raised*:

1. How did the oysters or clams originate?

- a. hatchery raised vs. wild raised
- b. grow-out trays vs. wild raised
- c. cages/netting vs. on bottom/no protection

2. Protection from predators is expensive.

- a. cost of production increases greatly when predator exclusion becomes a factor in production. This is a very capital and labor intensive production method.
- b. to offset the extra cost of production, labeling as *farm-raised* may demand more money to help recover some of the cost.

3. Additional consideration should be given to the following information.

- a. wild beds (public and private) can have hatchery oysters placed on them, but also have wild reproduced oysters present when the hatchery oysters are planted. Under the current definition these would be *wild-raised* oysters. Under the proposed changed definition they would be *farm-raised* on private ground and *wild-raised* on public grounds
- b. all clams and oysters (*wild-raised* and *farm-raised*) are grown in the same waters, unlike finfish and shrimp, etc. which can be grown in ponds, tanks, and raceways.